

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	
VIM Recycling, Inc. 29861 Old US Highway 33 Elkhart, Indiana	
and	
VIM Recycling, Inc. 64654 U.S. 33 East Goshen, Indiana	
and	
K.C. Industries, LLC 22907 S.R. 120 Elkhart, Indiana,	
<b>RESPONDENTS.</b>	

<u>AMENDMENT</u> <u>TO</u>  ADMINISTRATIVE <u>CONSENT</u> <del>PENALTY</del> <u>CONSENT</u> ORDER  EPA-5-09- <u>113(a)-IN-05</u> <del>113(a)-IN-05</del>  Proceedings Pursuant to Section 113(a)(1) and 114 of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and 7414
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**AMENDMENT TO ADMINISTRATIVE CONSENT ORDER**

4. The Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5, is issuing this Amendment to the Administrative Consent Order (the Order) issued by EPA to the above-captioned Respondents under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1) on June 29, 2009.

2.1. Statutory and Regulatory Background

2. Paragraphs 2 through 26 of the Order are hereby incorporated by reference as if set forth in this paragraph.

~~Section 110 of the Clean Air Act, as amended, (the Act), 42 U.S.C. § 7410, requires that each State, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of the Act for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State were to adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State.~~

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~~Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28) — (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order in accordance with subsection (d) of this section, or (C) bring a civil action in accordance with subsection (b) of this section. Section 114 of the Act, 42 U.S.C. § 7414, states that the Administrator may require any person subject to the Act to, among other things, maintain and keep records, make reports and any other information as the Administrator may reasonably require.~~

~~3. Section 302 (e) of the Act, 42 U.S.C. § 7602(e), defines the term “person” to include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.~~

~~3. Section 302 (g) of the Act, 42 U.S.C. § 7602(g), defines the term “air pollutant” as any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.~~

~~3. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the Act, 42 U.S.C. § 7410.~~

~~3. On June 22, 1978, EPA approved the Indiana Air Pollution Control Board regulation APC 2 (IN APC 2), enacted pursuant to the authority found in IC 13-1-1 and IC 13-7-4 and amending in its entirety Indiana Regulation APC 2 promulgated on December 6, 1968 and all resolutions adopted there under, as part of the federally enforceable Indiana State Implementation Plan (IN SIP). 43 Fed. Reg. 26721 (February 1, 1996). The effective date was July 24, 1978. Indiana has since re-codified IN APC 2 as 326 IAC 4-1.~~

~~3. The IN SIP defines an “open burning” as the combustion of any matter in the open or in an open dump.~~

~~3. The IN SIP defines an “open,” as used in open burning, as: a) the products of combustion are emitted directly into the open air without passing through a stack or chimney; or b) combustion occurs in a device other than an approved incinerator or boiler.~~

~~3.The IN SIP defines “material” as all biodegradable and non-biodegradable substances including garbage, rubbish ashes, commercial, industrial and institutional wastes, wood and wood products.~~

~~3.The IN SIP prohibits the open burning of any material, except as provided in two exemptions which are not applicable to this case.~~

~~3.Under Section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP requirement. The Administrator has delegated this authority to the Director of the Air and Radiation Division.~~

~~3.~~

### **3.Findings**

~~3.Respondent VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana is a corporation incorporated under the laws of the State of Illinois.~~

~~3.Respondent VIM Recycling, Inc., 29861 Old US Highway 33, Elkhart, Indiana is a branch location of VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana.~~

~~3.K.C. Industries, LLC, 22907 S.R. 120, Elkhart, Indiana, is a corporation incorporated under the laws of the State of Indiana.~~

~~3.Respondents own and/or operate a wood recycling facility located at 29861 Old U.S. Highway 33, Elkhart, Indiana.~~

~~3.Respondents Elkhart, Indiana facility contains outdoor piles of wood and construction and demolition materials in various stages of processing.~~

~~3.On May 5, 2009, representatives of EPA and the Indiana Department of Environmental Management (IDEM) visited the Respondents Elkhart, Indiana facility and found evidence of open burning of wood and construction and demolition materials at the site.~~

3. On May 8, 2009, EPA issued to Respondents a Notice of Violation documenting the evidence obtained by EPA and IDEM of the open burning of wood and construction and demolition materials at the site and alleging that Respondents were in violation of the IN SIP by open burning these materials at their Elkhart, Indiana facility.

3. On May 18, 2009, representatives of Respondents, EPA and the State of Indiana discussed the Notice of Violation.

### **3. Conclusions of Law and Violations**

3. Respondents are persons as defined by Section 302 (e) of the Act, 42 U.S.C. § 7602(e).

3. The smoke being emitted from Respondents' facility is an air pollutant as defined by Section 302 (g) of the Act, 42 U.S.C. § 7602(g).

3. The open burning at Respondents' facility was and is in violation of the IN SIP.

3. The open burning at Respondents' facility is in violation Section 110 of the Act, 42 U.S.C. § 7410.

3. None of the exemptions found under the IN SIP apply to the open burning currently occurring at Respondents' facility.

### **Proposed Civil Penalty**

31. \_\_\_\_\_ Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$37,500.

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32. Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (Penalty Policy). Enclosed with this Complaint is a copy of the Penalty Policy.

33. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### Rules Governing This Proceeding

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34. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

#### Filing and Service of Documents

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35. Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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36. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Kathleen Schnieders to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Schnieders at (312) 353-8912; her address is:

John P. Steketee (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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Penalty Payment

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37. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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~~38. Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Kathleen Schnieders at the addresses given above, and to:~~

~~Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604~~

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~~Answer and Opportunity to Request a Hearing~~

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~~39. If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.~~

~~40. In counting the 30 day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30 day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.~~



41. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

42. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

43. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

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#### Settlement Conference

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~~44. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Kathleen Schnieders at (312) 353-8912.~~

~~45. Respondent's request for an informal settlement conference does not extend the 30 day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.~~

#### Continuing Obligation to Comply

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~~46. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.~~

\_\_\_\_\_  
Cheryl Newton, Director \_\_\_\_\_ Date

Air and Radiation Division

U.S. Environmental Protection Agency, Region 5

In the Matter of:

Wayne Metals

Docket No.:

CERTIFICATE OF SERVICE

~~\_\_\_\_\_  
I, Betty Williams, certify that I hand delivered the original and one copy of the  
Complaint, docket number \_\_\_\_\_ to the Regional Hearing Clerk, Region 5,  
United States Environmental Protection Agency, and that I mailed correct copies of the  
Administrative Complaint, copies of the Consolidated Rules of Practice Governing the  
Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of  
Permits at 40 C.F.R. Part 22, and copies of the penalty policy described in the Complaint by first  
class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in  
the custody of the United States Postal Service addressed as follows:~~

\_\_\_\_\_  
\_\_\_\_\_  
Greg Meyers, President

\_\_\_\_\_  
\_\_\_\_\_  
Wayne Metals, LLC

\_\_\_\_\_  
\_\_\_\_\_  
400 East Logan Street

\_\_\_\_\_  
\_\_\_\_\_  
Markle, Indiana 46770

\_\_\_\_\_  
\_\_\_\_\_  
I also certify that I sent a copy of the Administrative Complaint by First Class Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
Phil Perry, Branch Chief

\_\_\_\_\_  
\_\_\_\_\_  
Office of Air Quality / Compliance Branch

\_\_\_\_\_  
\_\_\_\_\_  
Indiana Department of Environmental Management

\_\_\_\_\_  
\_\_\_\_\_  
100 North Senate Avenue / Room IGCN 1003

\_\_\_\_\_  
\_\_\_\_\_  
Indianapolis, Indiana 46204 2251

on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Betty Williams

\_\_\_\_\_  
\_\_\_\_\_  
Administrative Program Assistant

\_\_\_\_\_  
\_\_\_\_\_  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER:\_\_\_\_\_

**3.Compliance Program**

~~3.The condition found at Respondents shall comply, at all times relevant to this Order, with the IN SIP at their Elkhart, Indiana facility, and agree to fully demonstrate such compliance to EPA and& IDEM, in accordance with the following provisions.~~

3. Paragraph 27 of the Order is stricken and replaced with the following condition: Respondents shall immediately place soil, and/or water, ~~only to the extent necessary,~~ on all areas of any stockpiles at the site found to be burning or smoldering as a temporary measure to control smoke and/or odors. Respondents shall document these activities in accordance with paragraph 28 of this Order~~the placement of any such soil and provide such documentation to EPA and IDEM on a weekly basis.~~ Respondents shall continue to place soil on all areas of stockpiles which may experience burning or smoldering ~~throughout the implementation of this Order or~~ until the “C pile” materials are removed pursuant to paragraph 31 of this Order.

~~4. Paragraphs 28 through 29 of the Order are hereby incorporated by reference as if set forth in this paragraph.~~

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~~5. The condition found at Paragraph 30 of the Order is stricken and replaced with the following condition: All stockpiles will be monitored on a daily basis by site personnel as outlined in paragraphs 47, 48 and 49 of this Order. Any stockpiles found to be burning, smoking or smoldering will be addressed within one (1) hour during business hours and three (3) hours during non-business hours by application of soil and/or other measures to control smoke and/or odors, including the placement of enough soil on the stockpile at the end of each business day to prevent any burning, smoking or smoldering during non-business hours.~~

~~27. Respondents shall keep the following records concerning these activities:~~

- ~~a. Records shall be kept on site including the location(s) of all soil placement activities, estimated quantities of soil material placed, and date/time of placement.~~
- ~~b. Records shall be kept on site of all areas of stockpiles found to be burning, smoking or smoldering, along with the response action taken.~~
- ~~c. Records of soil material placement shall be made available to EPA or IDEM Agency personnel upon request at any time.~~

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~~28. As specified in paragraph 31 of this Order, the soil material placed on the "C" pile materials can be screened out and left on site pursuant to paragraph 33 of this Order.~~

~~6. Paragraphs 31 through 32 of the Order are hereby incorporated by reference as if set forth in this paragraph.~~

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~~29. The condition found at Paragraph 33 of the Order is stricken and replaced with the following condition: Prior to removal, the "C pile" materials may only be sorted such that larger materials, equal to or~~

greater than four (4) inches diameter, are removed by mechanical screening. Smaller materials, i.e. less than four (4) inches diameter, may remain on site for integration into marketable material authorized by IDEM. Larger materials, i.e. equal to or greater than four (4) inches diameter, must be removed from the site at a minimum rate of One Thousand, Five Hundreds (1,500) cubic yards per week.

~~30. Respondents must remove from the site all mixed construction and demolition debris equal to or greater than four (4) inches in diameter, contained in the "C piles," as defined in paragraph 32 of this Order. Respondents must comply with this requirement in its entirety by December 31, 2009.~~

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~~31. A site map delineating the boundaries of the "C piles" materials to be removed addressed pursuant to paragraph 31 is attached to this Order (see Attachment A). EPA may adjust the precise limits of the "C Piles" identified in Attachment A at any time during the implementation of this Order.~~

~~8. Paragraphs 34 through 68 of the Order are hereby incorporated by reference as if set forth in this paragraph.~~

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~~34. Further processing such as grinding, shredding or chipping is permitted on the "C pile" materials being removed pursuant to paragraph 31 of this Order, unless otherwise permitted by IDEM and approved in writing by EPA.~~

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~~35. Respondents shall take all reasonable measures to prevent fires and emissions of smoke or dust during the excavation, sorting, screening, and transport of all "C pile" materials.~~

~~36. Respondents shall prevent tracking of mud or debris onto public highways from vehicles involved in the transport of excavated materials.~~

~~37. Respondent shall limit work activities to comply with this Order, such as material excavation, sorting, screening and transport, to normal business hours.~~

~~38. All screened materials, i.e. particles equal to or less than four (4) inches in diameter, which remain on site, must be stored in engineered windrows which do not exceed twentyfive (2015) feet in height and have a minimum of twenty (20) feet separation in between other windrowed or stockpiled materials. The areas separating the windrowed or stockpiled material must be maintained to facilitate access by emergency vehicles.~~

~~39. All windrows of screened "C pile" resulting from screening must be maintained such that no fires occur within or on the surface of the windrows piles.~~

~~40. Load tickets will be completed, signed, recorded and maintained on site which document the date, hauler, approximate load volume in cubic yards and exact weight in tons, and destination of all materials removed pursuant to this Order.~~

~~41. Prior to commencement of the removal of "C pile" materials, certification reports shall be provided by Respondents to EPA for all scales utilized during the project, including the VIM Elkhart, Indiana site and any other facility receiving the "C pile" materials for processing or disposition.~~

~~42. All "C Pile" materials must be disposed of either in a solid waste land disposal facility permitted to accept this type of waste by IDEM under 329 IAC 10 or a solid waste processing facility permitted to accept this type of waste by IDEM under 329 IAC 11.~~

~~43. Respondents must provide EPA with a written summary of progress made to remove "C pile" materials, identified in paragraph 32 of this Order, each week by the following Monday at 12:00 noon Eastern Daylight Time via electronic mail. The summary should include the following:~~

~~Documentation of any soil or water placement on areas of any stockpiles found to be burning or smoldering pursuant to paragraph 27 of this Order.~~



- a. Description and corresponding weight/volume of “C pile” material removed during the week;
- b. Volume of screened “C pile” material left on site after processing;
- c. Cumulative totals of all “C pile” materials removed to date;
- d. Cumulative totals of all “C pile” materials remaining on site to be ~~process~~screened and removed;
- e. Summary of load ticket data (see paragraph 40);
- f. Inventory of all operating equipment on site dedicated to “C pile” ~~process~~screening and removal during the current week;
- g. Personnel on site dedicated to “C pile” removal during the current week; and
- h. Anticipated personnel, equipment and activities for the following week to ~~process~~screen and/or remove “C pile” materials.

44. ~~To the extent practicable, r~~Respondents shall provide and accurately update a the topographic map of “C Pile” material stockpiles, as defined found in Attachment A of this Order, which clearly delineates the vertical and horizontal limits of the “C pile” material stockpiles being removed, as well as screened material windrows remaining on site, during the week immediately prior to the due date of the progress reports specified in paragraph 57. The completed topographic map must be included in each progress report submitted to EPA.

45. EPA may require removal of additional wastes or materials stockpiled on site in the event that these stockpiles are not being managed in a manner which prevents fires from occurring.

~~46. In the event that fires are occurring in additional wastes or materials stockpiled on site, EPA will develop a schedule for Respondents to remove these additional wastes or materials from the site in accordance with the conditions contained in this Order.~~

~~47. During removal of the “C pile” materials, Respondents must provide 16-hour surveillance on site seven (7) days a week to ensure that any fires or smoking stockpiles of materials are immediately detected and reported to either company officials and/or the local fire department for appropriate response.~~

~~48. A schedule must be established by Respondents and a daily record shall be kept by Respondents on site including the name of surveillance personnel, time/date of all site inspections made, any visual observations of smoke or fire, and any notifications made either to company personnel or the local fire department.~~

~~49. Records of site inspections must be made available by Respondents to Agency personnel upon request at any time.~~

~~50. Respondents shall not accept any additional construction and demolition debris, including materials known as “B” or “C” materials, as defined below, at the 29861 Old U.S. Highway 33, Elkhart, Indiana site until all “C piles,” as defined in paragraph 32, materials are removed pursuant to this Order. At no time during the implementation of this Order shall Respondents stockpile or co-mingle any “B” materials, as defined below, within the limits or immediately adjacent to any existing “C piles,” as defined in paragraph 32 of this Order.~~

~~a. “B” materials are hereby defined as all “manufactured” wood products, including plywood, particle board, oriented strand board (OSB), and all other “manufactured” or “engineered” wood wastes which may contain chemical binders, resins, coatings, and/or glues.~~

~~b. "C" materials are hereby defined as "B" materials (as defined above), that have deteriorated or been mixed with soils and/or other debris such that they require initial sorting or mechanical screening prior to further processing.~~

~~51. Respondents must ensure that all workers dedicated to "C pile" sorting, screening and removal on site receive safety training and have adequate personal protective equipment, including reflective vests, safety glasses, hardhats, gloves and steel toed boots.~~

~~52. Respondents shall develop a contingency plan for possible emergencies (Site Emergency Plan) which may occur during the project in coordination with the local fire department, EPA and IDEM.~~

~~53. The Site Emergency Plan shall outline current site layout and conditions, site access, available local firefighting or emergency response resources, directions to the nearest hospitals, inventory of site equipment, contingency plans in the event of a fire, release or explosion, and emergency contact information for all company, local, state and federal emergency responders.~~

~~54. A draft Site Emergency Plan shall be submitted to both EPA within fourteen (14) days of the signature of this Order.~~

~~55. Respondents shall implement the Site Emergency Plan upon submittal to EPA.~~

~~56. Respondents must establish and maintain an Internet website to provide the public weekly updates on progress being made to mitigate fires, smoke and odors from the site along with the progress to remove stockpiled "C Pile" materials pursuant to this Order.~~

~~57. VIM must submit monthly summary reports of progress made to comply with this Order to EPA as follows:~~

~~a. Progress Report #1 by July 17 ~~ne 30,~~ 2009~~

~~b. Progress Report #2 by August 14 ~~July 31,~~ 2009~~

e. ~~Progress Report #3 by September 14~~ August 31, 2009

d. ~~Progress Report #4 by October 16~~ September 30, 2009

~~Progress Report #5 by November 13, 2009~~

~~Progress Report #6 by December 11, 2009~~

e. ~~Final Report by January 15, 2010~~ October 31, 2009.

58. ~~VIM~~ must send all reports required by this Order to:

~~Attention: Compliance Tracker (AE-17J)~~  
~~Air Enforcement and Compliance Assurance Branch~~  
~~U.S. EPA, Region 5~~  
~~77 West Jackson Boulevard~~  
~~Chicago, Illinois 60604~~

~~and~~

~~Attention: Bruce Palin~~  
~~State of Indiana Department of Environmental Management~~  
~~Office of Land Quality (MC 66-30)~~  
~~100 North Senate Avenue~~  
~~Indianapolis, Indiana 46204-2251~~

#### General Provisions

59. This Order does not affect Respondents' responsibility to comply with other federal, state, and local laws.

60. This Order does not restrict EPA's or IDEM's authority to enforce the Indiana SIP or any other requirement of the Act.

61. Nothing in this Order limits EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for Respondents' violations of the IN SIP.

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~~62. Failure to comply with this Order may subject Respondents to penalties of up to Thirty Seven Thousand, Five Hundred Dollars and No Cents (\$37,500) per day for each violation of the Order and or the CAA pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.~~

~~63. Should Respondents require an extension of any deadline in this Order, there must be a reasonable basis for any such extension and Respondents must submit a written request to EPA for any extension seven (7) business days prior to the deadline. EPA will use its discretion in deciding whether to grant any requested extension.~~

~~64. The terms of this Order are binding on Respondents, their assignees and successors.~~

~~65. Respondents must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.~~

~~66. EPA may use any information submitted to, or obtained by, EPA and IDEM under this Order in any administrative, civil, judicial, or criminal action.~~

~~67. Respondents agree to the terms and conditions of this Order and agree not to appeal this order to any administrative or judicial court or other entity.~~

~~68-9.~~ This Amendment to the Order is effective on the date of signature by the Director of the Air and Radiation Division. It will terminate one (1) year from the effective date, provided that Respondents have complied with all terms of the Order throughout its duration.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kenneth R. Will, President  
VIM Recycling, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl L. Newton, Director  
Air and Radiation Division

DRAFT

CERTIFICATE OF MAILING

I, Betty Williams~~[Name]~~, certify that I sent the Administrative Consent Order, U.S. EPA

Order No. EPA-5-09-113(a)-IN-05~~[number]~~, by Certified Mail, Return Receipt Requested, to:

Kenneth R. Will, President  
VIM Recycling, Inc.  
P.O. Box 3055  
Elkhart, Indiana 46515

and

Kenneth R. Will, President and Registered Agent  
VIM Recycling, Inc.  
64654 U.S. 33 East  
Goshen, Indiana 46526

and

Kenneth R. Will, Registered Agent  
K.C. Industries, LLC  
22907 S.R. 120  
Elkhart, Indiana 46516

\_\_\_ I also certify that I sent a copy of the Administrative Consent Order, U.S. EPA Order No.

EPA-5-09-113(a)-IN-05~~[number]~~, by First Class Mail to:

Bruce H. Palin  
Indiana Department of Environmental Management  
Office of Land Quality  
100 North Senate Avenue (MC 66-30)  
Indianapolis, Indiana 46204-2251

on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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CERTIFIED MAIL RECEIPT NUMBER:

Betty Williams, Administrative Program Assistant  
[Name, Title]  
AECAS(IL/IN[Section])

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